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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/751,723

01/05/2004

John M. Monk

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AGILENT TECHNOLOGIES INC.

INTELLECTUAL PROPERTY ADMINISTRATION,LEGAL DEPT.

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LOVELAND, CO 80537

EXAMINER

RUTKOWSKI, JEFFREY M

ART UNIT

PAPER NUMBER

2473

NOTIFICATION DATE

DELIVERY MODE

05/07/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPOPS.LEGAL@agilent.com

Office Action Summary

Application No.

10/751,723

Applicant(s)

MONK, JOHN M.

Examiner

JEFFREY M. RUTKOWSKI

Art Unit

2473

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3-16 and 21-25 is/are allowed.
- 6) ☒ Claim(s) 1 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim 2 has been cancelled.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 01/06/2010 has been entered.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. **Claims 17-20** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

4. For **claims 17-20**, the claims are not statutory because the computer readable medium includes signals and printed matter (see paragraph 0050 of the specification).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. **Claim 1** is rejected under 35 U.S.C. 103(a) as being unpatentable over Vallone et al. (US Pat 7,039,015), hereinafter referred to as Vallone, in view of Woodall (US Pat 6,735,579).

8. For **claim 1**, Vallone discloses *a host analyzer* (network management system **9**) *communicatively coupled to a first client analyzer* (communication device **12a**; see figure 3), *wherein the host analyzer incorporates a module* (data delivery analysis report logic **100**) *to process raw digital data* (network performance data that includes round trip network latency information; see col. 8 lines 16-20) *provided to the host analyzer by the first client analyzer* (the data delivery analysis report logic **100** analyzes the network performance data provided by the communication device **12a**. Vallone suggests the data delivery analysis report logic **100** processes raw data because the data is formatted after it is analyzed; see col. 8 lines 20-30) *for characterizing a packet-network-under-test* (packet network **16** is characterized as either operating as desired or not; see col. 6 lines 23-24 and col. 9 lines 5-20) *that is connected to the first client analyzer* (see figure 3).

9. Vallone suggests *a module* (data delivery analysis report logic **100**) to process raw data that is implemented in software (see col. 5 lines 6-10). Vallone does not disclose the use of a neural module. Woodall discloses *a neural processing module* (a software based constructed

neural network; see col. 3 lines 42-43. The constructed neural network contains a neural sensor **20**; see col. 8 lines 35-40) *to process raw digital data* (neural sensor **20** processes raw digital data; see col. 8 lines 35-40 and figure 2). It would have been obvious to a person of ordinary skill in the art at the time of the invention to use Woodall's architecture in Vallone's invention to perform pattern recognition on the received data (Woodall, col. 1 lines 28-29).

Response to Arguments

10. The arguments with respect to the computer readable medium being statutory because there is no reference to a signal in the claims are not persuasive. The claim does reference a signal because the computer readable medium includes signals (see paragraph 0050). Since the broadest reasonable interpretation of the claims covers a signal per se, the claim must be rejected under 35 U.S.C. § 101 as covering non-statutory subject matter. *In re Nuijten*, 500 F.3d 1346, 1356-57 (Fed. Cir. 2007) (transitory embodiments are not directed to statutory subject matter) and *Interim Examination Instructions for Evaluating Subject Matter Eligibility Under 35 U.S.C. § 101*, Aug. 24, 2009; p. 2.

Allowable Subject Matter

11. **Claims 3-16 and 21-25** are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY M. RUTKOWSKI whose telephone number is (571)270-1215. The examiner can normally be reached on Monday - Friday 7:30-5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kwang Yao can be reached on (571) 272-3182. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey M Rutkowski/
Examiner, Art Unit 2473

/KWANG B. YAO/

Supervisory Patent Examiner, Art Unit 2473